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Security Council

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Letter dated 31 July 2002 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter of 12 April 2002 (S/2002/457).

The Counter-Terrorism Committee has received the attached supplementary report from India, submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex).

I would be grateful if you could arrange for this letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Jeremy **Greenstock**
Chairman
Security Council Committee established pursuant to
resolution 1373 (2001) concerning counter-terrorism

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Annex

Letter dated 12 July 2002 from the Permanent Representative of India to the United Nations addressed to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

In response to your letter of 22 March 2002, on behalf of my Government, I have the honour to submit herewith to the Counter-Terrorism Committee additional information to the report transmitted to the Committee on 24 December 2001, on the measures taken by the Republic of India to implement the provisions of Security Council resolution 1373 (2001) of 28 September 2001 (see enclosure).

The report is in three parts. Section I covers developments since the submission of India's initial report to the Committee. Section II provides details of the organizational and administrative machinery/mechanisms to tackle terrorism, both from the law and order angle and to monitor and regulate the illicit financial transactions that finance terrorism. Section III provides answers to the specific queries raised by the Committee. I should be grateful if you would have the present letter and the enclosed report (all three parts) circulated as a document of the Security Council.

My Government stands ready to provide the Committee with further information as necessary, or if requested to do so by the Committee, and to assist it in the assessment of the implementation of the resolution.

(*Signed*) V. K. **Nambiar**

Enclosure

Security Council resolution 1373 (2001): supplementary report submitted by India*

India's approach to counter Terrorism

For two decades India has waged a struggle against terrorism, particularly cross border terrorism. During this period a large number of civilians and security personnel have lost their lives apart from rendering hundreds of thousands homeless. The terrorist attacks in USA on 11 September and other attacks such as on Legislative Assembly of Jammu and Kashmir and the terrorist attack on the Indian Parliament on December 13 underscored the fact that terrorism is a global phenomenon that transcends borders and regions. Linkages with illicit trafficking and small arms, narcotics and money laundering have enhanced the lethal reach and destructive potential of terrorism. A matter of further concern is the growing nexus between extremism of various types, including religious fundamentalism and terrorism. India has consistently pointed out to the international community that the fight against terrorism must be given the highest priority. India also believes that to be effective, the fight against terrorism has to be long term, comprehensive and sustained. It cannot be ad-hoc, selective or compartmentalized in terms of regions, religions or organisations. There can be no justification for terrorism on any grounds: religious, political, ideological or any other. It is also important to ensure that terrorists are denied support and that the international community acts to ensure that no country supports or provide safe havens for terrorists to act with impunity. To combat terrorism effectively, strong domestic measures need to be complemented by strengthened international cooperation to ensure that the fight against terrorism is not restricted only to the perpetrators but also encompasses the States who sponsor them.

* The annexes are on file with the Secretariat and are available for consultation.

India has been supportive of all international efforts, particularly in the UN, to combat terrorism. It is in this framework that India supports UN Security Council Resolution 1373 and is fully committed to implementing it. India is also a signatory to all the 12 UN Sectoral Conventions on Terrorism.

India has submitted its National Report on Measures Taken to Implement UN Security Council Resolution 1373. This has provided information on the measures already in place to tackle terrorism, encompassing both the criminalization and penalization of terrorist acts etc., and to suppress the financing of terrorism. It had also provided information on measures to strengthen international cooperation to combat terrorism.

The Supplementary Report

Further to India's National Report, this Supplementary Report seeks to respond to the questions and clarifications raised by the CTC. The Supplementary Report is structured in three parts:-

(a) Section I covers developments since submission of India's initial report to the CTC. This section inter alia deals with Prevention of Terrorism Act (POTA) – a comprehensive piece of Counter Terrorism legislation that had been adopted by the Indian Parliament since the submission of our initial report to the CTC.

(b) Section II has some details of the organisational and administrative machinery/ mechanisms to tackle terrorism, both from the law and order angle and to monitor and regulate the illicit financial transactions that finance terrorism. These agencies have been functional even before POTA and were instruments for combating Terrorism under the existing legislation. With POTA, the legislative authority is now strengthened.

(c) Answers to the specific queries raised by the CTC are covered in Section III.

Section I

Developments since submission of initial Report

Prevention of Terrorism Act, 2002

Since the submission of India's initial report to the CTC, a comprehensive piece of counter terrorism legislation - the Prevention of Terrorism Act – was adopted by Parliament on 26.3.2002.

Salient Features of Prevention of Terrorism Act, 2002

(i) It shall **extend to the whole of India.** It shall remain in force for a period of 3 years.

(ii) Section 3 of the Act defines '**Terrorist Act**' as any act or thing done by using bomb, dynamite or other explosive substances or fire arms or lethal weapons or poisons or noxious gases or other chemicals or by any other substances (whether biological or otherwise) of hazardous nature or by other means in such a manner as to cause or likely to cause death or injuries to any person or persons or loss or damage to or destruction of property or disruption of any supplies or services essential to the life of the community or causes damage or destruction to any property or equipment used or intended to be used in the defence of India in order to compel the Government or any other person to do or abstain from doing any act.

Membership of a terrorists gang or a terrorists organisation involved in terrorist acts shall also constitute a terrorist act. It is provided to proscribe terrorist outfits under the procedure prescribed for making additions or deletions in the list of such terrorist organisations. A person commits an offence if he invites support for

a terrorist organisation. A person also commits an offence if he arranges, manages or assists in arranging or managing a meeting which he knows is:

(a) to support a terrorist organisation,
(b) to further the activities of a terrorist organisation, or
(c) to be addressed by a person who belongs or professes to belong to a terrorist organisaation.

A person commits an offence if he addresses a meeting and the purpose of his address is to encourage support for a terrorist organisation or to further its activities.

A person also commits an offence under the Act if he wears an item of clothing, or wears, carries or displays an article in a public place in such a way or in such circumstances as to arouse reasonable suspicion that he is a member or supporter of a terrorist organisation. The provisions are similar to the ones obtaining in the UK Terrorism Act, 2000.

Further, whoever is or continues to be a member of an association declared unlawful under the Unlawful Activities (Prevention) Act, 1967, or voluntarily does an act aiding or promoting in any manner the objects of such association and in either case is in possession of any unlicensed firearms, ammunition, explosive or other instrument or substance capable of causing mass destruction and commits any act resulting in loss of human life or grievous injury to any person or causes significant damage to any property, commits a terrorist act.

Possession of certain unauthorised arms or other explosive substances or other lethal weapons capable of mass destruction and / or use in biological or chemical warfare unauthorisedly in a notified area constitutes an offence under this Act. However possession of hazardous explosives or such lethal weapons in any area whether notified or not shall also constitute an offence under this Act.

Terrorist acts also includes acts of fund raising by persons/organizations if such funds are intended for the purposes of terrorism. There are also provisions of seizing properties, assets etc. of terrorist organisations.

(iii) Provision under Section 3(6) seeks to punish those persons who may knowingly come in possession of property derived or obtained from commission of any terrorist act or has been acquired through the terrorist funds.

(iv) In Section 3(7) a new provision has been made for punishment of whoever threatens any person who is a witness or any other person in whom such witness may be interested. This is a salutary provision for protection of witnesses.

(v) Section 14 provides a new provision which makes it obligatory to furnish information in respect of a terrorist offence. Failure to furnish the information called for or deliberately furnishing false information to investigating officer shall be punishable with imprisonment for a term which may extend to three years or fine or both. The investigating officer can call for such information only with prior approval in writing of an officer not below the rank of Superintendent of Police.

(vi) Section 27 provides a new provision wherein a Police Officer investigating a case under the Act can request the Court in writing for obtaining samples of hand-writing, finger-prints, foot-prints, photographs, blood, saliva, semen, hair of any accused person who is reasonably suspected to be involved in the commission of an offence under this Act. If any accused person refuses to give such samples, the Court shall draw adverse inference against the accused. This is a salutary provision keeping in view the technological advances in Forensic Sciences and the desirability of promoting scientific investigation of cases.

(vii) Section 29(2) provides that a Special Court may try an offence which is punishable with imprisonment for a term not exceeding three years or fine or both in a summary way. In such cases the punishment prescribed on conviction would be one year imprisonment with fine upto Rs 5 lakhs.

(viii) Section 30 makes special provisions for protection of witnesses including holding of the Court proceedings in camera.

(i) Section 32 provides for admissibility of confessions made to a Police Officer.

(ii) Bail Provision:

Section 49(6) of the Act provides that no person accused of an offence punishable under this Act shall, if in custody, be released on bail or on his own bond unless the Court gives the public prosecutor an opportunity of being heard. Section 49(7) of the Act requires the magistrate to satisfy himself only regarding the innocence of the accused before granting bail to him.

Section 49(9) also provides that bail shall not be granted to a person accused of an offence punishable under this Act if he is not an Indian citizen and has entered the country (India) unauthorizedly / illegally except in exceptional circumstances and for reasons to be recorded therefor.

(x) Protection for action taken in good faith and punishment for corrupt and malicious prosecution of any person under this Act

Section 57 of the Act provides for protection to public servants for their actions under the Act in good faith while at the same time providing for punishment which extends to two years or fine or both against any Police Officer who knowingly or maliciously proceeds against any person for an offence under this Act when there are no reasonable grounds for proceedings against him. Further, Section 58 also provides for compensation to a person who has been corruptly and maliciously proceeded against under the Act. These are salutary provisions which will go a long way in curbing misuse of the Act.

(xi) Trial by Special Courts

The Act retains the provisions regarding trial by Special Courts as in the TADA (P) Act, 1987 and Criminal Law (Amendment) Bill, 1995 and also provides that trial by Special Courts will have precedence over the trial by any other courts and shall be concluded in preference to trial in any other case. Section 28 and 29 provide for appointment of a Public Prosecutor and procedures and powers of Special Courts respectively.

(xii) Provisions have been made under Part V to provide for special powers of interception of wire, electronic or oral communication and the admissibility of such evidence with a view to make the provisions more effective while dealing with organised crime/terrorist activity. These are on the lines of provisions existing in Maharashtra Control of Organised Crime Act, 1999.

(xiii) Provisions have been made under Section 60 of the Act for constitution of Review Committees by the Central Government as well as by the State Govts. The Chairperson of the Committee shall be a person who is, or who has been, a judge of a High Court.

Specific safeguards have been provided for in the Act with a view to prevent the possibility of the misuse of the special powers given to the investigating authorities and address the concern of violation of human rights raised in different quarters while also seeking to ensure that the provisions of the Act are not so diluted as to render them ineffective in combating terrorism.

Sectoral Conventions

Since submission of the National Report to the CTC India has become a signatory to the Convention on the Physical Protection of Nuclear Material. India is now signatory to all 12 sectoral conventions on terrorism. Measures are being taken for early ratification of Convention on Suppression of Financing of Terrorism.

Section II

(A) Organisational and Administrative Machinery to Deal with Criminalization and Penalization of Terrorism from the Law and Order Perspective

There is an elaborate machinery to deal with the criminalization and penalization of Terrorism from the law and order perspective both at the Centre and the State. The administrative setup at the federal Centre indicating the various agencies, security, police and paramilitary forces etc. is indicated in Chart I. In Chart II the structure of the police has been explained. In Chart III the administrative and organisational set up at the State level is indicated. Chart IV shows the administrative set up to track and deal in the immigration control, tracking etc. of foreigners, including those linked to terrorism.

CHART- I

Administrative Set up of Central Government

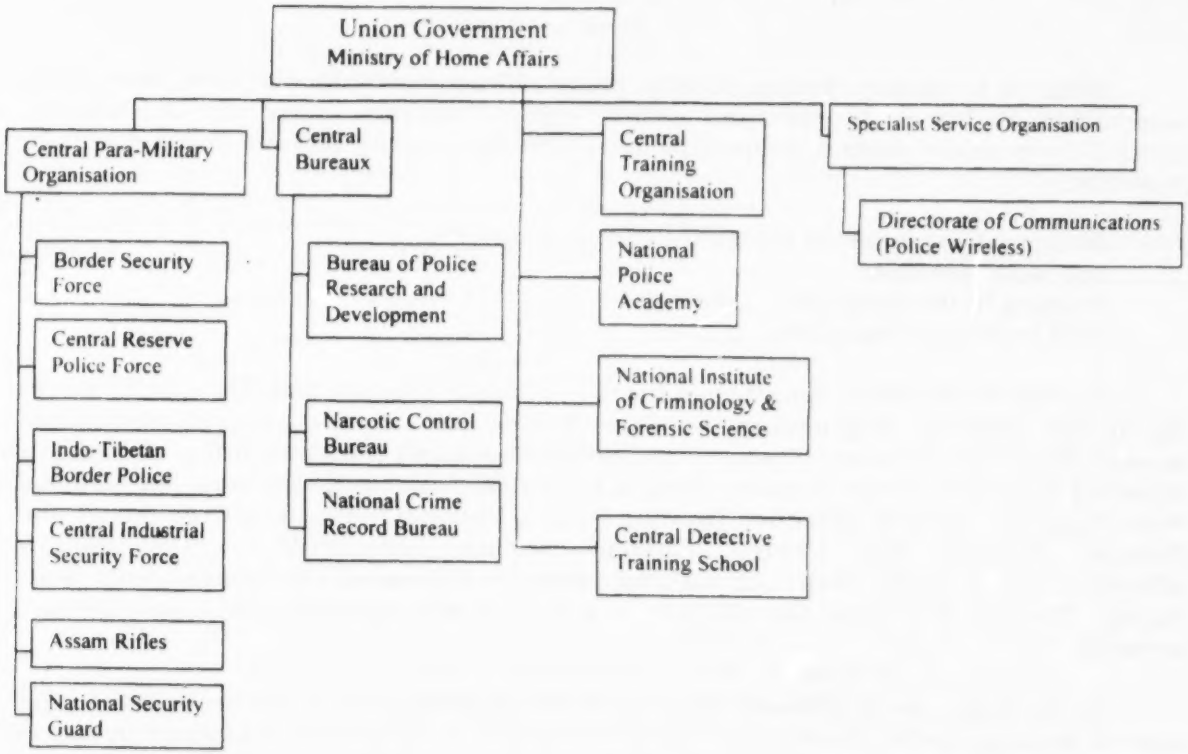


CHART-II

Structure of Police in India

India is a country having federal polity. State governments have been made responsible for law and order and normal police functions under the Constitution. Central Government plays a supportive role in the functioning of State Police Forces by providing –

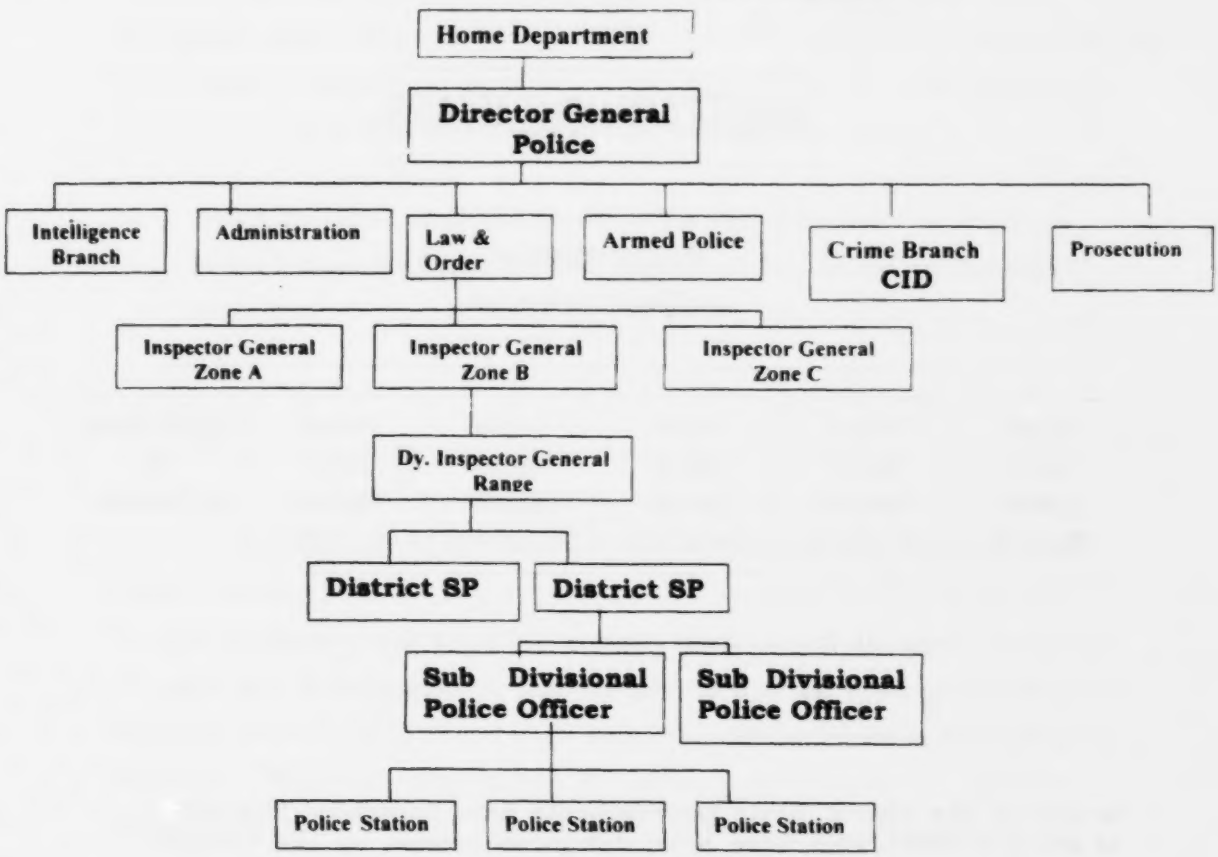
Additional police forces for law and order duties;
Specialist services;
Training in the specialised areas;
Help in natural calamities.

Central Government maintains a number of police organisations for specific duties like border policing, augmenting the State Forces etc. It also provides specialised services for computerisation, research and development and communication. Training is imparted to various levels of police officials at Central Training Institutions like National Police Academy, Central Detective Training School, National Institute of Criminology and Forensic Sciences and Central Forensic Science Laboratories. The training infrastructure available with Central Para Military Forces is also shared with State Police. The role of Central Government is shown in the organisational chart annexed herewith.

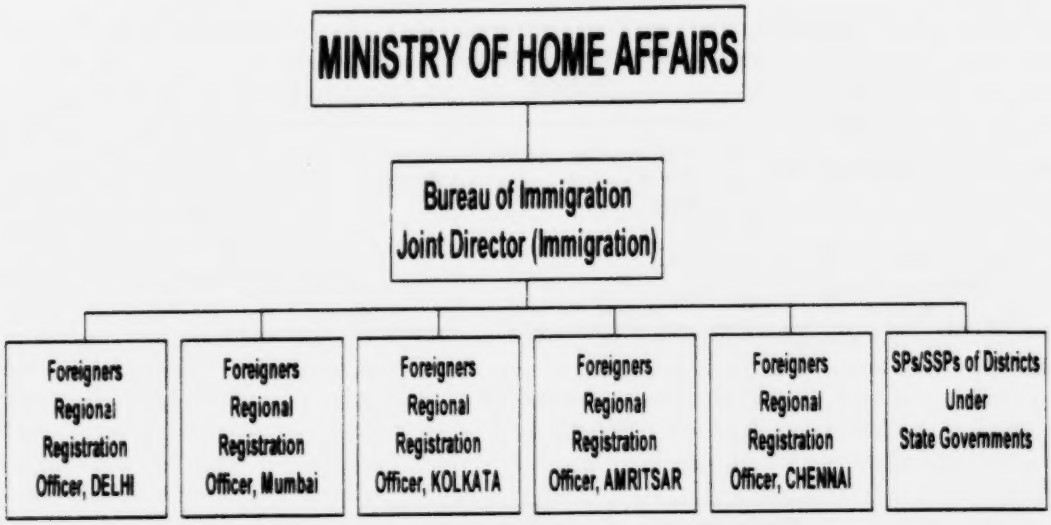
At the State level, police is responsible for maintenance of law and order, crime control, security, traffic control etc. Director General of Police who is assisted by one or more Additional DGPs responsible for various functional aspects, heads Police Force in the State. Each State is divided into zones and these zones are further divided into ranges, which are headed by Inspector General of Police and Deputy Inspector General of Police respectively. Each range includes about four districts, which are headed by Superintendent of Police. The districts are further divided into various police stations, which are the basic units of policing in India. Registration of crime, investigation, law and order and maintenance of security is the responsibility of the concerned police stations. Sub-Inspectors or Inspector-level officials head Police Stations. Superintendent of Police functions under general control and supervision of the District Magistrate. Organisational structure of police at the State level is annexed herewith.

CHART-III

Administrative Set up of State Government



ORGANISATIONAL CHART WITH BRIEF DESCRIPTIVE INDICATION OF FUNCTIONS OF THE ADMINISTRATIVE MACHINERY FOR IMMIGRATION CONTROL


MINISTRY OF HOME AFFAIRS
Bureau of Immigration
Joint Director (Immigration)
Foreigners Regional Registration Officer, DELHI
Foreigners Regional Registration Officer, Mumbai
Foreigners Regional Registration Officer, KOLKATA
Foreigners Regional Registration Officer, AMRITSAR
Foreigners Regional Registration Officer, CHENNAI
SPs/SSPs of Districts Under State Governments

Foreigners Regional Registration Officers (FRROs) are performing the work of immigration as well as registration of foreigners in five cities under Bureau of Immigration.

In rest of the places, State Governments have appointed SPs/SSPs of every district who have been delegated powers by the Central Government to perform immigration as well as registration duties on behalf of the Central Government.

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A number of agencies also operate with the mandate to collect intelligence regarding terrorist groups, acts etc. Such agencies include the Intelligence Bureau which is headed by a Director and has offices all over India. Where intelligence gathered on criminal activity reveals involvement of terrorists, this information is passed on to police authorities by the IB, who then register a case and then process it according to normal legal processes.

(B) Organisational and Administrative Mechanisms to Address Illicit Financial Transactions which can be Linked to Terrorist Activity.

There are a range of mechanisms that monitor and track illicit financial transactions which are often the channel used by terrorists in India to finance terrorism. Such mechanisms include the **Directorate of Enforcement** which monitors the Foreign Exchange Management Act, the **Central Board of Direct Taxes** which investigates evasion of income tax and the **Directorate of Revenue Intelligence** which essentially monitors violation of Customs Laws and proceeds driving from smuggling activities. Where in the process of collectin information on possible violations of income tax, customs laws, these bodies find evidence of linkages to terrorism, this information is processed and then passed on to Police authorities to register a case and initiate proceedings within the framework of Indian domestic legal framework. Detailed description of each of these bodies is indicated below:

(i) Enforcement Directorate

The Directorate of Enforcement functions under the Ministry of Finance, Department of Revenue, Government of India, and is entrusted with the task of enforcing the provisions of Foreign Exchange Regulation

Act, 1973 (FERA) (since repealed with effect from 1.6.2000 with a saving clause to finalise the pending investigations till 31.5.2002) and Foreign Exchange Management Act, 1999 (FEMA). The Directorate is headed by Director of Enforcement. The Directorate has its Head Office at New Delhi with 7 Zonal Offices at Ahmedabad, Bangalore, Chennai, Calcutta, Delhi, Jalandhar and Mumbai. Each Zonal Office is headed by an officer of the rank of Deputy Director of Enforcement. There are Sub-Zonal Offices under Zonal Offices.

Action against terrorists

So far as involvement of terrorists in various FERA/FEMA violations is concerned, the Directorate primarily initiates action on receipt of information to this effect from CBI and/or Police authorities who are entrusted with the job of nabbing terrorists activities. The involvement of the persons involved in terrorist activities, vis-à-vis, provisions of FERA/FEMA are restricted to their indulgence in hawala money transactions. Broadly speaking, hawala transactions are those transactions where money (in Indian or foreign currencies) is received or paid in compensation of certain acts/goods, etc. The relevant provisions of FERA/FEMA prohibit receipt and distribution of payments in India without the permission of the RBI as per instructions of persons residing outside India. As and when such cases are referred to the Directorate by Police and other agencies, necessary action is taken.

(ii) Central Board of Direct Taxes

The Investigation Wing under the Income Tax Department is engaged in investigations into the cases of evasion of Income Tax and generation of black money. The Investigation Wing functions under the overall

supervision of the Director Generals of Income Tax (Inv) stationed all over the India.

Investigations regarding evasion of Income tax are conducted on the basis of intelligence gathered by the Department from various source such as informants, general public, other Government agencies, etc. In certain cases intelligence is also gathered in house. In suitable cases search and seizure operations under the provisions of Income Tax Act are carried out to unearth undisclosed income. In other cases, suitable action under the Income Tax Laws is taken to bring undisclosed income to tax.

Whenever information relating to any other Government agency such as Police, Enforcement Directorate, Customs & Central Excise, Department of Company Affairs, SEBI etc. is collected by the Income Tax Department, the same is passed on to the concerned Agency/Department for further necessary action.

(iii) Directorate of Revenue Intelligence

Directorate of Revenue Intelligence functions under the Central Board of Excise & Customs in the Ministry of Finance, Department of Revenue. Headed by Director General in New Delhi, it is divided into four zones, each under the charge of an Additional Director General and further sub-divided into Regional Units, Sub-Regional Units and Intelligence Cells with a complement of Additional Directors, Joint Directors, Deputy Directors, Assistant Directors, Senior Intelligence Officers and Intelligence Officers.

Directorate of Revenue Intelligence is charged essentially with collection of intelligence, its analysis, collation, interpretation and

dissemination on matters relating to violations of customs laws. DRI also substantially enforces the anti-narcotic laws. In order to ensure effective discharge of its responsibilities, DRI maintains close liaison with all the important enforcement agencies in India like the Central Economic Intelligence Bureau, Income Tax Department, Enforcement Directorate, Narcotics Control Bureau, Directorate General of Foreign Trade, Border Security Force, Central Bureau of Investigation, Coast Guard, the State Police authorities and also with all the Customs and Central Excise Commissionerates. It also maintains close liaison with the World Customs Organisation, Brussels, the Regional Intelligence Liaison Office at Tokyo, INTERPOL and foreign Customs Administrations. Thus if in the course of such investigations any matter concerning illegal or criminal activities, including terrorism comes to notice, it will be passed on to relevant law enforcement agencies.

Officers of Directorate of Revenue Intelligence are basically trained to detect fraud/activities connected with smuggling having revenue implications and those related to trafficking in Narcotics & Psychotropic Substances. However, as indicated in para above, while performing these basic tasks whenever any possible involvement/complicity of terrorism is detected, the information is shared/passed on to the appropriate authority.

The Charter of DRI

- Collection of intelligence about smuggling of contraband goods, narcotics, under-invoicing etc. through sources of India and abroad, including secret sources.

- Analysis and dissemination of such intelligence to the field formation for action.
- Working out of intelligence by the Directorate officers themselves to a successful conclusion, where necessary.

- Keeping watch over important seizures and investigation cases.

- Associating or taking over the investigations which warrant specialised handling by the Directorate.

- Guiding important investigation/prosecution cases.

- Functioning as the liaison authority for exchange of information among ESCAP countries for combating international smuggling and customs frauds in terms of the recommendation of the ESCAP conference.

- Keeping liaison with foreign countries, Indian Missions and enforcement agencies abroad on anti-smuggling matters.

- To keep liaison with CBI and through them with the INTERPOL.

- To coordinate, direct and control anti-smuggling operations on the Indo-Nepal border.

- To refer cases registered under the Customs Act to the Income Tax Department for action under the Income Tax Act.

- To keep statistics of seizures and prices/rates etc. for watching trends of smuggling and supply required material to the Ministry of Finance and other Ministries.

- To study and suggest remedies for loopholes in law and procedures to combat smuggling.

(iv) Intelligence Bureau

The Intelligence Bureau also plays an important role in suppression of financing of terrorism. As regards the financial transactions which impinge upon national security the organisation collects intelligence inputs, analyses them. These are then shared with the various agencies like the DRI, Income Tax and State Police. Donations and other financial flows from abroad are also tracked where there is a possible link with terrorism.

Financing of terrorist related activities is mainly done through the clandestine channel of hawala. IB gathers intelligence of such activity and once there is sufficient evidence of involvement with terrorism and the mechanisms by which the money is coming to the terrorists, the information is further developed and passed on to the police authorities who then register a case and proceed according to the law.

COMMENTS ON UN COUNTER-TERRORISM COMMITTEE (CTC) QUESTIONNAIRE

Sub-Para-graph		Comments of CTC	Comments of the Government of India
1(a)	(i)	Is the Prevention of Terrorism Ordinance (POTO) still in force or when will the Prevention of Terrorism Ordinance enter into force?	Parliament has enacted a comprehensive Anti Terrorism Legislation, viz., Prevention of Terrorism Act, 2002 (POTA). The Act was notified on 28th March, 2002 but as per the provisions of the Act itself, it comes into force from 24th October 2001, the day from which the Prevention of Terrorism Ordinance, 2001 (POTO) was promulgated. It replaces the Prevention of Terrorism Ordinance, 2001 (POTO).
1(a)	(ii)	It is stated in paragraph 12 of the report that "most transactions in the criminal world are unorganised, are informal, shadowy and as they are not through institutional mechanisms are extremely difficult to tract, let alone offer evidence or proof for purposes of prosecution". As a member of the G-20, India has nevertheless pledged to stop abuse of informal banking networks, particularly Hawalah. Please comment on how this is or will be reflected by Indian legislation.	India is committed to preventing abuse of informal banking networks such as *hawala*, since terrorist organisations misuse hawala to finance their activities. This is certainly a difficult task given the informal, amorphous nature of such transactions, apart from the difficulties of gathering hard evidence or proof for the purposes of prosecution. Efforts are underway to strengthen the Foreign Exchange Management Act to prevent informal banking activities like Hawala. In any case, these are illegal under the existing Banking Laws and the Regulations of the Reserve Bank of India concerning dealing in foreign exchange. As and when these operators and organisations are detected they are prosecuted under the relevant laws like Conservation of Foreign Exchange and Prevention of Smuggling Act, Customs Act, Income Tax Act and also proceeded

S/2002/883

			against under the provisions of the Foreign Exchange Management Act as the case may be.
	(iii)	Does India put natural or legal persons other than banks (e.g. attorneys, notaries) under a legal obligation to report suspicious transactions that might be linked to terrorist activities?	Section 14 (1) of the POTA casts obligation upon any officer, authority of Central Government or a State Government or a local authority or a Bank, or a Company, or a firm or any other institution, establishment, organisation or any individual to furnish information in their possession in relation to such offence, on points or matters where such information will be useful for, or relevant to, the purposes of this Act, namely preventing Terrorism. Failure to furnish information as called for is punishable with imprisonment up to 3 years or with fine or with both.
1(a)	(iv)	Has India enacted an anti money laundering legislation?	The Money-laundering bill (legislation) is under consideration by the Indian Parliament.

1(b)	(i)	Could you please clarify how the acts listed in this sub-paragraph are criminalized in India?	Section 3 (1) (b) of POTA defines act of raising funds intended for the purpose of terrorism to be a "Terrorist act." Section 3(2)(b) of POTA prescribes the punishment for such act of raising funds. The punishment prescribed is imprisonment for a term which shall not be less than 5 years but which may extend to imprisonment for life and shall also be liable to fine. Section 22 of the POTA makes fund raising for a terrorist organisation to be an offence. A person guilty of an offence under this section is liable on conviction, to imprisonment for a term not exceeding 14 years or with fine or with both.
1(b)	(ii)	What measures are there to prevent or punish acts committed by terrorist organisations operating from India by fund raising for example, but for a cause not likely to affect Indian interests?	To deal with terrorist entities operating in India but for a cause unlikely to affect Indian interests, the UN Security Council Act, 1947, has provisions which enables Government of India to give domestic effect to the decisions of the UN Security Council. In the orders passed under this legislation, necessary action is being taken, particularly with regard to such terrorist entities notified by the UN. The provisions of POTA criminalize all fund raising by terrorist organisations.

1©	(i)	According to the report (Paragraph 13), a determination has to be made before persons can be detained, property seized or forfeited or the use of funds prohibited; could you please clarify who is entitled to make this determination in the context of sub-paragraph 1(c) of the Resolution.	Section 6-17 of the POTA deal with the seizure and forfeiture of property. "Proceeds of Terrorism" is defined to mean "all kinds of properties which have been derived or obtained from commission of any terrorist act or have been acquired through funds traceable to terrorist act." The act of raising funds has also been defined as terrorist act. Section 7 of the POTA provides that if an Officer (not below the rank of Superintendent of Police) investigating an offence committed under this Act, has reasons to believe that any property in relation to which an investigation is being conducted, represents proceeds of terrorism, he shall seize such property with the prior approval in writing of the Director General of Police of the State in which such property is situated. This section is also applicable to properties of an organisation declared as Terrorist Organisation under the Act. Investigating officer shall duly inform the designated authority within 48 hours of the seizure or attachment of such property. It shall be open to the designated authority to either confirm or revoke the order of seizure/attachment after an opportunity has been given to person whose property is being attached. Under Section 8 of the POTA, the authority to order forfeiture of proceeds of terrorism is the Special Court.

			Under Section 10 of POTA, appeal against the order of the Special Court lies to High Court within whose jurisdiction the Special Court is situated.
1(c)	(ii)	According to paragraph 14 of the report, the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act) provides for tracing, freezing and seizing of illegally acquired property; do the Unlawful Activities (Prevention) Act, 1967 (Act 37, 1967) or other legal provisions serve the same purposes, including g tracing, in respect of funds and other financial assets or economic resources, be they of legal or illegal origin, of the persons and entities described in sub-paragraph 1 (c) of the Resolution?	Section 7 of POTA contains provisions for an investigating officer not below the rank of Superintendent of Police to seize or attach property in relation to terrorism when investigation is being conducted after obtaining the approval of Director General of Police. Therefore, under POTA, there is sufficient provision to seize all property, including cash which is intended for the purpose of terrorism.

1(c)	(i)	What are the legal provisions governing the forfeiture or seizure of proceeds of terrorist activities, especially if they are not related to offences like smuggling or drug trafficking?	Already described in detail in para 1 c(i) above.
1(d)	(i)	Please identify the legal provisions, which implement this sub-paragraph in India.	Section 22 of POTA makes the act of providing any money or other property to organisations involved in terrorist activities an offence punishable with imprisonment for a term not exceeding fourteen years or with fine or with both. Under Section 3(3) of the Act, whoever abets a terrorist act (act of raising funds) by providing money or other property, shall be punishable with imprisonment for a term which shall not be less than 5 years but which may extend to imprisonment for life and shall also be liable to fine.

1(d)	(ii)	How does the financial tracking system see that funds received by associations are not diverted from their stated purposes to terrorist activities?	The receipt of funds by Associations from external sources is governed by **Foreign Contribution (Regulation) Act, 1976 read with Foreign Contribution (Regulation) Rules, 1976**. The act requires the permission of the Central Government for the acceptance and utilisation of foreign contribution by Associations. Under Section 5 of the Act, organisations of the political nature, not being a political party, notified as such by the Central Government can receive foreign contributions only with the prior permission of the Central Government. Under Section 6(1) and 1(a) of the Act, associations having a definite cultural, economic, educational, religious or social programme can receive foreign contribution after getting themselves registered with the Central Government or after obtaining its prior permission. Section 4 of the Act provides for the prohibited category of the persons who cannot receive any foreign contribution. Under Section 10 of the Act, Central Government is empowered to place a registered association in the prior permission category. Under the same section, any individual association or organisation can also be prohibited by the Central Government from accepting any foreign contribution. Applications for grant of registration or prior permission

S/2002/383

			to accept foreign contribution are to be made to the Ministry of Home Affairs in the prescribed form. The said application is examined on the basis of a set of administrative guidelines framed by the Ministry. These guidelines covers parameters such as security and public interest, financial standing of the applicant in its chosen field of activity, nationality of its office bearers, past violations of the provisions of the Act etc. **Monitoring**: Every association registered under the Act or granted prior permission to receive foreign contributions, is to file an annual return duly certified by a chartered accountant with this ministry, intimating the receipt of foreign contribution during the year and manner of its utilisation within four months of the close of the financial year. A 'Nil' report is also mandatory. Central Government can also order the inspection of the accounts/records of an association or the audit of its books and accounts. **Penal Provisions:** The penal provisions in the Act for dealing with cases of contravention of its provisions include punishment with imprisonment for a term, which may extend to five years, or with fine or with both. The Central Government can also prohibit payment of currency received in contravention of the Act or seize and confiscate any article or currency it believes has been acquired by a person in contravention of the provisions of the Act.

		Indian Income Tax Act and Societies Registration Act: The provisions of the Indian Income Tax Act and Societies Registration Act also enable the authorities to monitor and track use of funds by charitable organisations, and registered societies to ensure that diversion of funds from stated purposes are detected.

2 (a)		Could you kindly indicate the manner in which India is able to prevent entities and individuals to, clandestinely or under any other pretext, recruit, collect funds or to provide any other form of support to terrorist activities to be carried out inside or outside India? Please outline the measures, both legislative and practical, preventing entities and individuals from recruiting, collecting funds or soliciting other forms of support for terrorist activities to be carried out inside or outside India, including in particular: • the carrying out, within or from India, of recruiting, collecting of funds and soliciting of other forms of support from other countries; and • deceptive activities such as recruitment based on a representation to the recruit that the purpose of the recruitment is one (e.g. teaching) different from the true purpose and collection of funds through front organisations.	The police and the intelligence agencies are sensitised to prevent recruitment to such entities or organisations. In addition, all States maintain an updated data/information base with regard to the activities of terrorist groups.

2(b)		Please describe the mechanism for inter-agency co-operation, also between the Federal States of India, as regards an early warning mechanism for the exchange of information with other states as well as for a unified approach in implementing the resolution, in particular as regards the interaction between the authorities responsible for narcotics control, financial tracking and security (including as regards border controls – sub-paragraph 2 (g).	Ministry of Home Affairs (MHA) at the federal level is the nodal ministry for co-ordination between the federal agencies and the state level intelligence agencies regarding terrorism matters. The intelligence agencies under MHA and other federal ministries are in regular touch with the intelligence agencies of the States. Any information received by any of the intelligence agencies is shared with sister agencies at federal level and State level to prevent terrorist acts. India, which has faced terrorist violence as a part of cross border terrorism during the last 20 years, has developed a system for inter-agency cooperation both at national and State levels. Realising the need for early warning in real time and adequate follow up action to counter terrorist activities, an institutionalised mechanism has been established where different agencies pool their resources/information on aspects related to counter terrorism to ensure synergy in collection and analysis. At a centralised place, necessary data is maintained and is shared with all the concerned agencies. Similar institutionalised mechanisms have also been established in States, which are witnessing terrorist activities.

S/2002/283

2©		How does India implement sub-para 2© of the resolution?	India's policy is to deny safe haven and any support to terrorists. The extensive domestic legislation dealing with all dimensions of terrorism, the elaborate administrative machinery both on the law and order side as also to ensure that illicit financial transactions are not misused to finance terrorism as also the State and Centre police forces, intelligence agencies etc. all ensure that no safe haven is available to those who are terrorists or in any way support, finance, train etc. terrorists.
2 (d)		Could you please elaborate on the statement in paragraph 7 of the report according to which the "provisions for preventive action against terrorist/criminals are very mild" in the Code of Criminal Procedure 1973?	Under Section 151 Code of Criminal Procedure (Cr.P.C.), a Police Officer knowing of a design to commit any cognizable offence may arrest without warrant any person, if it appears that the commission of the offence cannot be otherwise prevented. The provision has been described as mild because, no person detained under this section can be detained for more than 24 hours. If no evidence can be gathered against the person within 24 hours under any other law then he would have to be released. It may not be possible to gather evidence against a suspected terrorist within 24 hours. However, in those cases involving terrorists it is not uncommon to obtain a Court order for police custody for a longer period for further investigation. The earlier comment had been made in the context of how the existing provisions of C.P.C. facilitate, beside preventing terrorist acts, proper investigation and prosecution of terrorist offences.

			Both POTA and the Indian Penal Code (IPC) have provisions to prevent those who finance, plan, facilitate or commit acts of terror from using Indian territories for such acts.
2(e)	(i)	Are terrorist acts in the sense of sub-paragraph 2(e) established as serious criminal offences in India, if these acts have neither been committed in India nor against Indian interests?	The UN Security Council Act, 1947 empowers the Union Government to take any measure short of use of armed forces to implement the UN Security Council Resolution under Article 41 of the UN Charter. The Act can be invoked against terrorist organisations, which have been listed by UN Security Council.
2(e)	(ii)	Has India implemented sub-paragraph 2(e) of the Resolution in regard to terrorist organisations, which do not fall under section 18(1) of the Prevention of Terrorism Ordinance?	Under the provisions of the above Act, India is issuing notifications freezing the assets of terrorist organisations listed by UN Sanctions Committee under UNSCR 1267, 1333 and 1390. The Act also has extra-territorial jurisdiction and is being invoked against organisations not listed under Section 18(1) of POTA.

2(e)	(iii)	Are the relevant provisions of the Indian Penal Code applicable to acts committed abroad by an Indian citizen or by a person who has his or her habitual residence in India?	Indian Penal Code is applicable to acts committed abroad by Indian citizens (Section 4 – extra territorial offences). Section 4 of the Indian Penal Code deals with the extension of Code to extra-territorial offences and provides as follows: "The provisions of this code shall apply also to any offence committed by: (1) any citizen of India in any place without and beyond India; (2) any person on any ship or aircraft registered in India wherever it may be. *Explanation* – In this section the word "offence" includes every act committed outside (India) which, if committed in (India) would be punishable under this Code.
	(iv)	Are the relevant provisions of the Indian Penal Code also applicable when the acts have been committed abroad by a foreign national who happens to be in India?	Indian Penal Code is applicable to the acts committed beyond India by a person who happens to be in India (Section 3 – punishment of offences committed beyond India but which by law may be tried within India). By virtue of Section 4(1), the extra-territorial effect of IPC is limited to Indian citizens. However, by virtue of Section 4(2) of the IPC it extends to any person if an offence is committed by that person on a ship or aircraft registered in India. Further, in the context of extradition, Section 34 of the Extradition Act has extensive extra-territorial jurisdiction. By virtue of this provision a foreign national who has committed an extradition offence abroad but who happens to be in

			India, can be prosecuted in India for such offence. Section 34 of the Extradition Act, 1962, provides as follows: "34. An extradition offence committed by any person in a foreign State shall be deemed to have been committed in India and such person shall be liable to be prosecuted in India for such offence."
2(f)	(i)	Does India have any legal provisions or regulations governing the implementation of sub-paragraph 2(f) apart from the agreements and arrangements described in Section III of the report such as a law on mutual legal assistance in criminal matters?	India has a well developed law on mutual assistance in criminal matters which enables India to seek from and extend cooperation to foreign States in respect of mutual legal assistance in criminal matters. This law is contained in the Code of Criminal Procedure, 1973. (Cr. P.C.). The relevant sections of the Cr. P.C. are Ss. 105, 105A to 105L, and 166A and 166B. It includes execution of judicial processes; assistance in relation to orders of attachment or forfeiture of property, identifying unlawfully acquired; management of property so seized or forfeited; procedure to be followed in case of letter of request; letter of request to competent authority for investigation in a country or place outside India; and the execution of a letter of request from a country or place outside India to a Court or authority for investigation in India.
2(f)	(ii)	Is the existence of a bilateral agreement or agreement or arrangement a prerequisite for India before it can afford legal assistance to other countries as requested by this sub-paragraph?	Under Section 105 of the Cr. P.C., 1973, for the service or execution of summons or warrants in relation to criminal matters, reciprocal arrangements would be necessary. Similarly for other purposes dealt with in Sections 105A to 105L, reciprocal arrangements would be necessary. In reciprocal agreements or arrangements both countries agree to extend mutual legal assistance in criminal matters subject to their

			national laws. Thus, this requirement is less formal and is strictly based on reciprocity. It is different from the move formal bilateral agreements on mutual judicial assistance in criminal matters, which are applicable strictly in accordance with their terms and conditions.
2(f)	(iii)	How long does it take on the average to implement a request for judicial assistance in criminal investigations or criminal proceedings relating to the financing or support of terrorist acts?	It depends on the nature of the case, but every effort is made to extend expeditious assistance.
2(g)		Please explain how the procedures for the issuance of identity papers and travel documents support the prevention of the counterfeiting, forgery or fraudulent use of those documents and what measures exist to prevent their forgery etc.	To prevent counterfeiting, forgery and fraudulent use of passport, India has introduced Machine Readable Passports which will have the photograph and signature of the applicant scanned on to the booklet. This and other security features built into the newly designed passports will check the instances of tempering of passports including substitution of photographs, counterfeiting and forgery. These cannot be elaborated upon for security reasons.
3(a)		With which countries has India build Joint Working Groups to exchange information to combat terrorism and has it the intention to build such working groups with other countries, too?	India has Joint Working Groups with a number of countries, including USA, UK, EU, France, China, Kazakhstan and welcomes all efforts to strengthen international cooperation to combat terrorism, including through such mechanisms with other countries.

3(b)		Apart from being a member of INTERPOL, Has India entered into bilateral or multilateral agreements for the cooperation in administrative matters?	India has a range of agreements, e.g., double taxation avoidance agreements etc. with a large number of countries designed to enhance cooperation in administrative matters. We are active members of the World Customs Organisation and Indian Customs share information with counterpart organisations whenever they are approached for assistance.
3(c)	(i)	Could India provide the CTC with the model of a bilateral agreement to combat terrorism?	Agreement establishing a Joint Working Group with Kazakhstan is enclosed.
3(c)	(ii)	Is there a difference between the extradition treaties and the extradition arrangements, which are mentioned under paragraph 21 of the report?	There is difference between an extradition treaty and an extradition arrangement. While an extradition treaty is a more formal agreement providing modalities for the extradition of fugitive offenders in accordance with the terms and conditions of the treaty, under the extradition arrangement, the two countries agree to reciprocally extend their national extradition laws with respect to each other. This understanding is usually reached after mutual consultations/exchange of letters. At the national level a gazette notification, indicating such reciprocity, is issued.

3(d)		It is understood from paragraph 23 and appendix II of the report that India is not yet a party to the Convention on the Physical Protection of Nuclear Material signed at Vienna on 3 March 1980, of the International Convention for the Suppression of the Financing of Terrorism adopted by the General Assembly of the United Nations on 9 December 1999; the CTC is therefore looking forward to receiving a progress report on the ratification of these two international legal instruments.	Since submission of the National Report to the CTC India has acceded to the Convention on the Physical Protection of Nuclear Material. Measures are being taken for early ratification of Convention on Suppression of Financing of Terrorism. The **Prevention of Terrorism Act, 2002** also provides for criminalizing the financing of terrorism with adequate penalties.
3(e)	(i)	What is the intention of the Indian government regarding the introduction of an implementing legislation for the three international conventions listed in Appendix II of the report under points 6, 9 and 10?	After the adoption of POTA, a comprehensive piece of counter terrorism legislation, additional implementing legislation with regard to these three conventions may not be necessary.
3(e)	(ii)	Have the crimes set forth in the relevant UN conventions been included as extraditable offences into the bilateral treaties, which India has concluded with other countries as provided for in several UN Conventions against terrorism?	In extradition treaties that India has concluded with foreign States, no-list method is adopted and an extradition offence under most of the treaties, means an offence punishable with an imprisonment of more than one year. Thus all the offences falling within the scope of relevant UN Conventions are automatically get covered within the scope of the bilateral extradition treaties. Even in cases where there is no extradition treaty made by India with any foreign State, the Central Government may, by notified order, treat any convention to which India and a foreign State are

			Parties, as an extradition treaty made by India with that foreign State providing for extradition in respect of the offences specified in the Convention (Section 3(4) of the Extradition Act, 1962).
3(f) and (g)	(i)	Please elaborate on the efforts, which are made in order to implement these sub-paragraphs.	The police and the intelligence agencies ensure that no foreigner with suspicious links related to terrorism can find residence in India. Adequate checks are carried out in this regard before regularizing the stay in India.
3(f) and (g)	(ii)	Could India please make clear whether requests for extradition of alleged terrorists could be refused on political grounds?	No. Extradition of alleged terrorists cannot be refused on political grounds. Section 31(2) of the Extradition Act makes clear that the terrorist offences such as: (i) Offences under the Anti-Hijacking Act, 1982. (ii) Offences under the Suppression of Unlawful Acts Against Safety of Civil Aviation Act, 1982. (iii) An offence within the scope of the International Convention on the Punishment of Crimes against Internationally Protected Persons including Diplomatic Agents, opened for signature at New York on 14th December, 1973. (iv) An offence within the scope of the International Convention against the Taking of Hostages, opened for signature at New York on 18th December, 1979. (v) Culpable homicide, murder (Sections 299-304 IPC). (vi) Voluntarily causing hurt or grievous hurt by a

			dangerous weapon or means (Sections 321–333 of IPC). (vii) Offences under the Explosive Substances Act, 1908. (viii) Possession of a firearm or ammunition with intention to endanger life (Section 27 of the Arms Act, 1959). (ix) The use of a firearm with intention to resist or prevent the arrest or detention (Section 28 of Arms Act, 1959). (x) Causing of loss or damage to property used for public utilities or otherwise with intention to endanger life (Section 425 read with Section 44 of IPC). (xi) Wrongful restraint and wrongful confinement (Sections 339 to 348 of IPC). (xii) Kidnapping and abduction including taking of hostages (Sections 359 to 369 of IPC). (xiii) Offences related to terrorism and terrorist acts. (xiv) Abetting, conspiring or attempting to commit, including participating as an accomplice in the commission of the offences listed above. shall not be regarded as offences of a political character.
		The CTC could be grateful to know whether your Government has addressed any of the concerns expressed in paragraph 4 of the Resolution.	India is signatory to the Biological Weapons Convention as also the Chemical Weapons Convention and is committed to ensure that terrorists do not have access to weapons of mass destruction. Efforts to address linkages between terrorism and illicit trafficking in drugs etc. have been described extensively both in the National Report and elsewhere in the Supplementary Report. Apart from domestic legislation such as NDPS Act (described earlier in the National Report) etc. to

			tackle illicit trafficking in drugs, India has several bilateral agreements for exchange of information and mutual assistance on drug related matters.
		Other Matters: It would also be useful to the CTC to have an organisational chart of the administrative machinery, such as police, immigration control, customs, taxation and financial supervision authorities, to give practical effect to the laws, regulations and other documents that are seen by your government as contributing to compliance with the Resolution.	Included in Part II of the Report.

S/2002/883